

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BRUCE SMITH,

Petitioner,

v.

CASE NO. 04-CV-73768-DT  
HONORABLE PATRICK J. DUGGAN

DOUG VASBINDER,

Respondent.

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on MAY 24, 2005.\_

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

Petitioner Bruce Smith filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, which this Court denied on May 4, 2005. Petitioner seeks to appeal the Court's decision and therefore requests a certificate of appealability from this Court. *See* 28 U.S.C. § 2253. Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

As the Supreme Court recently stated, when a district court denies a habeas petition on the merits of the claims, a certificate may issue if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional

claims debatable or wrong. *Slack v. McDaniel*, 520 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). However, when a district court denies habeas relief on procedural grounds without reaching the petitioner's constitutional claims, a certificate may issue if the petitioner shows that jurists of reason would find it debatable whether (1) the petition states a valid claim of a denial of a constitutional right; *and* (2) the district court was correct in its procedural ruling. *Id.* at 484-85, 120 S. Ct. at 1604.

This Court dismissed Petitioner's application for a writ of habeas because the petition was filed beyond the statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). 28 U.S.C. § 2244(d). Petitioner fails to establish that this procedural ruling was incorrect. The Court therefore holds that he is not entitled to a certificate of appealability and DENIES the request.

**SO ORDERED.**

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

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